

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**ELITE FUEL SIX, INC.,
IOWA GAS GROUP, INC.,
ISH OBEROI, INDIVIDUALLY AND
UNITED MINI-MART, INC.**

UST NO. 198607427 4140 Park Ave. Des
Moines, IA

**ADMINISTRATIVE ORDER
NO. 2010-UT-15**

**To: Ish Oberoi
9 Elk Run Rd.
Waterloo, IA 50703**

**Elite Fuel Six, Inc.
Reg. Agent, Ish Oberoi
9 Elk Run Rd.
Waterloo, IA 50703**

**Iowa Gas Group, Inc
Reg. Agent, Shital N. Mehta
438 New York Lane
Elk Grove Village, IL 60007**

**United Mini-Mart, Inc.
Reg. Agent, Farrukh Pasha
2919 E. 14th St.
Des Moines, IA 50316**

I. SUMMARY

This administrative order (order) requires you to pay an administrative penalty of \$10,000 within 60 days of receipt of this order unless the order is appealed as provided in Division VII below. The penalty is assessed for operating underground storage tanks (USTS) at the referenced facilities without an approved form of financial responsibility in violation of Iowa law.

Any questions regarding this order should be directed to:

Relating to technical requirements:
Paul Nelson, Environmental Specialist
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/281-8779

Relating to legal issues:
Tamara Mullen, Attorney
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/242-5817

II. JURISDICTION

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This order is issued pursuant to Iowa Code sections 455B.474(1)(f)(11) and 455B.476, which authorize the Director of the Iowa Department of Natural Resources (Department) to issue any order necessary to secure compliance with Iowa Code Chapter 455B, Division IV, Part 8 and Department rules contained in chapters 567 Iowa Administrative Code (IAC) 135 and 136. Iowa Code section 455B.109 and administrative rules in chapter 567 IAC 10 authorize the Director to assess administrative penalties up to \$10,000.

III. STATEMENT OF FACTS

1. Wallace A MC New Revocable Trust transferred ownership of property located at 4140 Park Ave, Des Moines, Iowa to Iowa Gas Group, Inc. (Iowa Gas) by deed recorded on November 23, 2007. Iowa Gas transferred ownership of the property to Elite Fuel Six, Inc. (Elite Fuel 6) by deed recorded on February 8, 2008.
2. Elite Fuel 6 is an Illinois corporation registered with the Iowa Secretary of State and doing business in Iowa. Ish Oberoi is president of Elite Fuel 6 and upon information and belief is a principal stockholder. Ish Oberoi is also the president and upon information and belief the principal stockholder in Elite Fuel One, Inc., Elite Fuel Two, Inc., Elite Fuel Three, Inc., Elite Fuel Four, Inc. Elite Fuel Five, Inc., Elite Fuel Seven, Inc. and Elite Fuel Eight, Inc. all of which are Illinois companies registered with the Iowa Secretary of State (except Elite Fuel Eight, Inc) and doing business in Iowa. Upon information and belief, all of these corporations have owned or operated UST facilities.
3. Iowa Gas is an Illinois corporation. Iowa Gas registered with the Department as the owner of two petroleum USTS at 4140 Park Ave, Des Moines, Iowa on Department form 148 dated November 27, 2007. Paul Ghuman identified himself as the authorized representative of Iowa Gas. Paul Ghuman is president of Iowa Gas and upon information and belief a principal stockholder. The registration form did not identify a separate entity as an UST operator.
4. United Mini-Mart, Inc. is an Iowa corporation. United Mini-Mart, Inc. registered with the Department as the owner of USTS at this location on a Department registration form dated March 25, 2009. The registration form does not identify a separate entity as an UST operator.
5. There are 6,000 and 10,000 gallon petroleum USTS located at the 4140 Park Ave., Des Moines, Iowa facility.
6. PMMIC, an UST insurance company, issued an insurance certificate covering the USTS at the 4140 Park Ave., Des Moines, Iowa site naming "Iowa Gas Group, Inc." as the named insured with effective coverage dates of May 8, 2007 to May 7, 2008. PMMIC also issued an UST insurance

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certificate with the same policy number naming "Elite Fuel" as the named insured and Ish Oberoi as an additional insured with effective dates of May 8, 2007 to May 7, 2008. PMMIC also issued an UST insurance certificate with the same policy number naming "Elite Fuel Six, Inc." as the named insured and Ish Oberoi as an "additional insured" with effective policy dates of May 8, 2007 to May 7, 2008. PMMIC issued a notice cancelling the UST policy effective August 11, 2008.

7. Ish Oberoi at times relevant to this order represented himself and Elite Fuel 6 as an operator of the USTS.

8. Zurich, an UST insurance company, issued an insurance certificate covering the USTS at this location and identifying United Mini-Mart, Inc. as the named insured with effective coverage dates of January 27, 2009 to January 27, 2010. United Mini-Mart, Inc. requested cancellation of the policy in April 2009. Zurich issued a notice cancelling the policy effective August 31, 2009.

9. There was no approved form of financial responsibility on the USTS at this site between August 11, 2008 and the Zurich insurance start date of January 27, 2009. There has been no approved form of financial responsibility on the UST system at this site after the Zurich cancellation date of August 31, 2009.

10. The Department sent a letter dated September 2, 2008 addressed to Paul Ghuman and Elite Fuel 6 notifying them that the PMMIC insurance policy had been cancelled. The notice directed them to immediately cease operation of the USTS and notified them it was illegal to operate the USTS without financial responsibility. The notice also stated that failure to provide proof of continuous financial responsibility may result in a requirement to conduct soil and groundwater sampling to determine if a release has occurred from the USTS and to preserve insurance coverage.

11. By letter addressed to Paul Ghuman and Elite Fuel 6 dated September 24, 2008, the Department required tank tags be returned to the Department; and if not, the Department field office would remove them. The letter also required the parties to conduct a site check by November 1, 2008 based on the failure to maintain continuous financial responsibility. The site check has never been completed and the PMMIC insurance was cancelled August 11, 2008.

12. On October 2, 2008, the Department field inspector visited the site and confirmed the USTS were still in service. The inspector removed the tank tags and informed the store manager that it was illegal to accept fuel without tags and without financial responsibility.

13. On October 10, 2008 a cathodic protection field test was performed by Tanknology Inc. (Tanknology). The test indicated the system was within compliance standards.

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14. On October 16, 2008, Tanknology conducted tank tightness tests and line leak detector tests. The 10,000 gallon super unleaded tank and line passed the tightness test. The 6,000 gallon regular tank tightness test was "inconclusive" because the tester could not remove the drop tube to isolate the tank riser pipe and therefore eliminate possible air ingress. The regular gas line passed the tightness test. Both line leak detector tests failed. Tanknology reported observing a hole in the overspill bucket and recommended replacement. The report appears to have been submitted to the Department sometime in 2009 along with the Zurich certificate of insurance showing United Mini-Mart, Inc. as the named insured with effective dates of January 27, 2009 to January 27, 2010.

15. On May 5, 2009, Tanknology conducted tank and line tightness tests and line leak detector tests. The 6,000 gallon regular tank tightness test failed. The tester reported that the vent line, the drop tube and submersible turbine pump (STP) were isolated down to the tank top and the tank still had air leaks. The tester recommended an internal inspection of the tank and tank lining. The UST owner or operator never reported this failed tank tightness test to the Department.

16. On July 23, 2009, the Department conducted a site visit. The facility was no longer selling fuel. The 10,000 gallon tank had 8.28 inches of fuel present in the tank while the 6,000 gallon regular tank had 7.80 inches of fuel present. The containment structure for the STP on the 10,000 gallon tank had several inches of water in it. The inspector noted that the fill-pipe caps were not secured, one of the dispenser hoses was badly damaged and the product hoses were not secure. The cathodic protection rectifier was not operational.

17. The Department issued a notice of violation (NOV) dated July 29, 2009 to the current Department registered UST owner, Farrukh Pasha, for failure to properly temporarily close the USTS and submit a certification of temporary closure, failure to maintain the cathodic protection system, failure to maintain financial responsibility, and failure to continue leak detection. Mr. Pasha was given until August 31, 2009 to remedy the violations.

18. On August 31, 2009, Mr. Pasha spoke with a Department staffperson, Paul Nelson, and informed him that he intended on removing the USTS at this location. Mr. Pasha was given tank closure guidance and a tank closure notification form.

19. The Department inspector conducted a follow-up inspection on November 30, 2009 and determined the UST conditions had not changed since the prior July 23, 2009 inspection. The Department issued a NOV dated December 21, 2009. The notice required Mr. Pasha to comply with the NOV issued on July 29, 2009 and to submit the required documentation by January 22, 2010.

20. The Department has not received any documentation that the violations have been remedied. The USTS remain out of service.

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21. The owner and operator of these USTS has failed to pay annual tank management fees for the year 2010 in the amount of \$130 and statutorily required late fees of \$500 (\$250 per tank).
22. The owner and operator of these USTS has failed to complete the required third-party compliance inspection for the period 2008-2009.

IV. CONCLUSIONS OF LAW

1. Iowa Code chapter 455B, Division IV, Part 8 (sections 455B.471-455B.479) establishes the UST program. Section 455B.472 declares that the release of regulated substances, including petroleum products, from USTS constitutes a threat to the public health and safety and to the natural resources of the state. Iowa Code section 455B.474 authorizes the Environmental Protection Commission (Commission) to adopt rules related to release detection and prevention, financial responsibility, tank closure, site assessment, risk classification, and corrective action applicable to all owners and operators of USTS. The Commission has adopted such rules in chapters 567 IAC 135 and 136. The Director of the Department may order any responsible UST owner or operator to take all corrective action consistent with Commission rules. See Iowa Code section 455B.474(1)(f)(11).
2. Iowa Code section 455B.471(6) defines "owner" of USTS. Iowa Gas acquired ownership of the property on November 11, 2007 and registered as the UST owner on November 27, 2007. Elite Fuel 6 acquired property ownership by deed dated February 2, 2008. United Mini-Mart, Inc. registered with the Department on March 25, 2009 as the owner of the USTS at this location. However, there is no record that United Mini-Mart, Inc. acquired property ownership. Until documentation can otherwise be provided the Department considers Iowa Gas, Elite Fuel 6 and United Mini-Mart, Inc. to be owners of the USTS and responsible for compliance with the applicable terms of this order.
3. Iowa Code section 455B.471(5) defines an "operator" of USTS as " . . . a person in control of, or having responsibility for, the daily operation of the underground storage tank." Elite Fuel 6 was the named insured on PMMIC UST policies until cancelled on August 11, 2008. Ish Oberoi was an additional insured. Ish Oberoi in his capacity as president of Elite Fuel 6 was a primary person having control of the daily operation and regulatory compliance of the UST system. Elite Fuel 6 and Ish Oberoi are operators as defined and responsible for compliance with the applicable terms of this order.
4. United Mini-Mart, Inc. operated the USTS at this location during some part of 2008 and 2009 and was the named insured on the Zurich UST policy with effective dates of January 27, 2009 until cancelled effective August 31, 2009. United Mini-Mart, Inc. is an operator as defined in Iowa Code section 455B.471(5) and responsible for compliance with the applicable terms of this order.

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5. Owners and operators of USTS must maintain an approved financial assurance mechanism continuously until the tanks are permanently closed. See generally chapter 567 IAC 136 and 567 IAC 136.22. If insurance is the financial responsibility mechanism, owners and operators must obtain and provide proof of insurance using a certificate of insurance or endorsement the content of which is specified in 567 IAC 136.8. Upon cancellation of UST insurance, the named insured has 6 months in which to file a claim under the policy or the claim may be denied. See 567 IAC 136.18.
6. All owners and operators are required to maintain records documenting proof of an approved form of financial responsibility. See 567 IAC 136.20. They must submit proof of financial responsibility to the Department upon request and annually along with payment of annual tank management fees. 567 IAC 136.19, 567 IAC 135.3(5).
7. When USTs are taken out of service for 3 months, the tanks must be temporarily closed in accordance with 567 IAC 135.15(1) and a certification of temporary closure form submitted to the Department. All fuel from the tank must be removed to a de minimus amount (1 inch) and all fill pipes and vents must be secured.
8. The rules governing permanent closure of USTS are found in 567 IAC 135.15(2). Pursuant to those rules, any UST that is temporarily closed for more than twelve (12) months must be permanently closed either by removal or by filling in place with an inert material unless the tanks meet the tank system performance and upgrade standards in 567 IAC 135.3(1) & (2). See 567 IAC 135.15(1). Owners and operators of the USTS are required to conduct a site closure investigation, including soil and water sample analysis, to determine if a release of a regulated substance has occurred. 567 IAC 135.15(3). A closure report must be submitted to the Department within forty five (45) days of tank removal or filling in place. 567 IAC 135.15(3)"e". An owner or operator must give the Department at least thirty (30) days notice of his intent to close any UST. 567 IAC 135.15(2).
9. All USTS systems must be protected against corrosion protection. If an impressed current corrosion protection system is the corrosion protection method it must be maintained and tested every 3 years. Records of the past two 3-year corrosion protection test reports must be maintained. See 567 IAC 135.3 and 135.4(2). Any impressed current corrosion protection system must have continuous electrical service to be operational.
10. USTS that are internally lined must be internally inspected within 10 years of installation and every five years thereafter. See 567 IAC 135. USTS that are both internally lined and protected with cathodic protection must maintain the cathodic protection system and failure to do so can result in a requirement to conduct internal lining inspections. See 567 IAC 135.3(2).

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11. Owners and operators are required to pay annual tank management fees of \$65 per tank no later than April 1 of each year. A late fee of \$250 per tank shall be assessed for failure to pay the tank fees by April 1. See Iowa Code section 455B.473 and 567 IAC 135.3(5).

12. Owners and operators are required to retain a Department certified compliance inspector and complete a facility compliance inspection for the compliance period beginning January 1, 2008 and ending December 31, 2009. See 567 IAC 135.20. Compliance inspections must be conducted with 24 months with a minimum separation of 6 months after the 2008-09 inspection.

13. Owners and operators are required to report a suspected or confirmed release to the Department within 24 hours or 6 hours if the conditions constitutes a "hazardous conditions". A suspected release may be evidenced by leak detection monitoring results indicating a possible leak. See 567 IAC 135.6(1). When there is a suspected release, owners and operators must undertake release investigation and confirmation steps including a system tightness test. If the system test indicates a leak may have occurred, a soil and groundwater site check must be conducted and the UST system must be repaired. 567 IAC 135.6(3)

14. The USTS at this location were operated after the PMMIC insurance was cancelled effective August 11, 2008. Iowa Gas and Elite Fuel 6 and Ish Oberoi were responsible owners and operators at this time. Furthermore, these owners and operators failed to maintain continuous financial responsibility after cancellation. United Mini-Mart, Inc. requested cancellation of the Zurich policy in April 2009 and the policy was cancelled effective August 31, 2009. It is not clear if United Mini-Mart, Inc. owned or continued in its operator status after August 31, 2009 but the Department finds that until proven otherwise it was an operator after this date. Iowa Gas and Elite Fuel 6 were UST owners and both were responsible to maintain continuous financial responsibility until the USTS are permanently closed.

15. The Department removed tank tags on October 2, 2008 and upon information and belief the USTS were not operated after that date. However, the Department has never received documentation of proper temporary closure. Iowa Gas, Elite Fuel 6, Ish Oberoi and United Mini-Mart, Inc. were owners and operators during periods where this violation occurred.

16. The May 5, 2009 tank tightness test indicated a failure. This constitutes a suspected release which was not timely reported by the owner or operator. The tank has not been internally inspected to determine if a leak could have occurred and a site check has not been conducted. Until documentation can establish differently, Iowa Gas, Elite Fuel 6, Ish Oberoi and United Mini-Mart, Inc. were owners and operators responsible for this violation.

17. These USTS have been out of operation since at least October 2, 2008 and do not meet performance standards. At least as of October 2, 2009, the UST system has been required to be

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permanently closed. As of October 2, 2009, Iowa Gas, Elite Fuel 6, Ish Oberoi and United Mini-Mart, Inc. have been owners and operators required to close the UST system.

V. ORDER

THEREFORE, you are ordered to comply with the following provisions in order to redress violations:

1. Within fourteen days of receipt of this order, Iowa Gas, Elite Fuel 6, Ish Oberoi and United Mini-Mart, Inc. are jointly and severally responsible to submit a tank closure notification form and a copy of a contract with an Iowa licensed tank remover documenting an agreement for the permanent closure of the USTS at this location and a completion of a tank closure soil and groundwater investigation. The UST system must be permanently closed no later than July 23, 2010 and a tank closure report must be submitted to the Department no later than August 13, 2010. The UST system closure must comply with rule 567 IAC 135.15 and applicable guidance.
2. Iowa Gas, Elite Fuel 6. and Ish Oberoi are jointly and severally responsible to pay an administrative penalty of \$10,000 by check payable to the Iowa Department of Natural Resources within 60 days of receipt of this order unless the order is appealed as provided in Division VII below. United Mini-Mart, Inc. is jointly and severally responsible to pay \$4,000 of the total \$10,000 assessment. Payment shall be to the order of the Iowa Department of Natural Resources within 60 days of receipt of this order unless the order is appealed as provided in Division VII below.
3. Iowa Gas, Elite Fuel 6 and United Mini-Mart, Inc. are jointly and severally responsible to pay delinquent annual tank management fees of \$130 and \$500 in late fees no later than July 9, 2010.

VI. PENALTY

1. Iowa Code section 455B.477 authorizes the assessment of civil penalties of up to \$5,000 per day of violation for violation of the type cited in this order.
2. Iowa Code section 455B.109 authorizes the assessment of administrative penalties up to \$10,000 for violations of Iowa Code chapter 455B or rules, permits, and orders promulgated or issued pursuant to chapter 455B. Chapter 567 IAC 10 establishes policy for assessment of administrative penalties. Pursuant to rule 567 IAC 10.2, the Department has determined that a penalty should be assessed. The administrative penalty is determined as follows. The Department reserves the right to re-assess the penalty rationale if additional information warrants modification.

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ECONOMIC BENEFIT: There are numerous violations applicable to the named parties. The economic benefit can be estimated by the compliance costs that will be avoided given that these tanks are now required to be permanently closed. Avoided costs include the cost of maintaining continuous insurance after August 11, 2009 until a Zurich policy was established effective January 27, 2009. The cost is estimated to be \$500. The Zurich policy was cancelled effective August 31, 2009 and the owner and operator have avoided the cost of maintaining coverage until the USTS are permanently closed. The estimated cost of maintaining insurance since August 2009 is \$1900.

The cost of properly temporarily closing the tanks by removal of all product is estimated to be \$300. The cost of avoiding a third party compliance inspection is estimated to be \$400. Assuming the parties complete a tank closure investigation, the economic benefit can be measured by the interest earned on the cost of compliance over the period of non-compliance. However, a site check was required to be completed by November 2008. The interest is deemed nominal. For this factor, \$3,100 is assessed jointly and severally against Iowa Gas, Elite Fuel 6 and Ish Oberoi.

GRAVITY: There are numerous violations including operating without financial responsibility, failure to maintain continuous financial responsibility, failure to properly temporarily close the UST system, failure to submit records, failure to maintain the cathodic protection system and failure to report a suspected release and undertake release confirmation steps. These violations continued over a long period of time without remedial action and violations could be considered separate and distinct for purposes of applying the \$3,000 maximum assessment for this factor. For this factor, \$5,000 is assessed jointly and severally against Iowa Gas, Elite Fuel 6 and Ish Oberoi. United Mini Mart, Inc. because of its more limited status, is jointly and severally required to pay \$2,000.

CULPABILITY: Iowa Gas, Elite Fuel 6 and Ish Oberoi were given prior notice of the financial responsibility violations at this site and others in Iowa. They continued to operate without financial responsibility and essentially abandoned these USTS without proper temporary closure. As stated above, there were numerous violations that could be considered separate and distinct for purposes of assessing the maximum \$3,000 assessment for this factor. For this factor, \$5,000 is assessed against Iowa Gas, Elite Fuel 6 and Ish Oberoi. United Mini-Mart, Inc. because of its limited operational status is jointly and severally required to pay \$2,000.

AGGRAVATING FACTORS: Iowa Gas, Elite Fuel 6. and Ish Oberoi owned or operated at least 9 sites in Iowa with violations similar to those identified in this order. The failure to maintain continuous financial responsibility, properly temporarily close the sites and failure to conduct a site check within the 6-month extended reporting period following the PMMIC cancellation jeopardizes the availability of insurance coverage in the event a release from this UST system is discovered as the result of this closure investigation required by this order. For this factor \$1,000 is assessed against Iowa Gas, Elite Fuel 6 and Ish Oberoi.

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Total Assessment = The Department will assess the statutory maximum of \$10,000.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.476, and chapter 567 IAC 7 which adopts by reference chapter 561 IAC 7, the named parties may file a written notice of appeal to the Commission within 30 days of receipt of this order. The party should file this notice of appeal with the Director of the Department, and must identify the specific portion or portions of this order subject to appeal. The party must also include a short and plain statement of the reasons for appeal. A contested case hearing will then commence pursuant to Iowa Code chapter 17A and chapter 567 IAC 7.

VIII. NONCOMPLIANCE

Failure to comply with this order may result in the imposition of further administrative penalties or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.477. The Department reserves the right to request that the Attorney General initiate legal action based on the violations alleged in this order, as well as any subsequent violations in the event the party violates the order, including failure to timely pay any penalty.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 23 day of
June, 2010

Copy: Named parties, David Wornson, Field Office 5, E. Douskey, DNR, V. (C)(I)